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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
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BOB STUMP-Chairman
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BOB BURNS
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IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
INSTALL A WATER LINE FROM THE WELL ON
TIEMAN TO WELL NO. 1 ON TOWERS

W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
PURCHASE THE WELL NO. 4 SITE AND THE
COMPANY VEHICLE.

W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING FOR AN
8,000-GALLON HYDRO-PNEUMATIC TANK

W-04254A-12-0206

IN THE MATTER OF THE RATE
APPLICATION OF MONTEZUMA RIMROCK
WATER COMPANY, LLC.

W-04254A-12-0207

JOHN E. DOUGHERTY,
COMPLAINANT,
V.
MONTEZUMA RIMROCK WATER
COMPANY, LLC,
RESPONDENT.

W-04254A-11-0323

Arizona Corporation Commission

DOCKETED

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EAF

1 IN THE MATTER OF THE APPLICATION OF
2 MONTEZUMA RIMROCK WATER
3 COMPANY, LLC FOR APPROVAL OF A
4 RATE INCREASE.
5

W-04254A-08-0361

6 IN THE MATTER OF THE APPLICATION OF
7 MONTEZUMA RIMROCK WATER
8 COMPANY, LLC FOR APPROVAL OF A
9 FINANCING APPLICATION.
10

W-04254A-08-0362

11
12 **REPLY BRIEF OF INTERVENOR/COMPLAINANT JOHN E. DOUGHERTY**
13 **SEPTEMBER 20, 2013**
14

15 **I. INTRODUCTION**
16

17 Intervenor/Complainant hereby files its reply brief in this consolidated matter.
18 Intervenor/Complainant will address the Opening Briefs by Staff and the Company
19 separately.
20

21 Decision No. 67583 granted Montezuma Rimrock Water Company the CC&N for its
22 service area based in part on Conclusions of Law, No. 6 that stated: "MRWC is a fit and
23 proper entity to receive the Assets and Certificate of the Company."¹
24

25 The Arizona Corporation Commission does not have a definition for a "fit and proper"
26 entity or individual. According to the International Association of Securities
27 Commissions (attached) a "fit and proper person" is one who is financially sound,
28 competent, reputable and reliable.
29

30 Ms. Patricia Olsen, the MRWC's managing member, fails to meet any of these standards.
31

32 During the evidentiary hearing, Ms. Olsen repeatedly testified she was confused about
33 basic lease agreements used to acquire equipment, which demonstrates Ms. Olsen is
34 incompetent to make basic financial decisions on behalf of the utility.²
35

36 MRWC's failure to maintain its books and Annual Reports to meet minimum regulatory
37 standards required by NARUC further demonstrates the company is not competent to
38 manage the financial matters of a utility.³
39

40 Ms. Olsen's refusal to abide by Procedural orders by docketing invalid "personal leases"
41 with forged signatures⁴ as a placeholder to deceive the Commission that MRWC did not

¹ C-Ex 4, Decision 67583.

² Olsen Testimony, Vol. II, Pg. 365, Ln. 9-16.

³ Becker, Testimony, Vol. IV, Pg. 875, Ln. 24-25, Pg. 875, Ln. 1-3.

⁴ C-EX 8, Olsen Personal Leases.

1 need prior approval of long term debt under ARS 40-301, -302, demonstrates Ms. Olsen
2 is not reputable.

3
4 And MRWC's ongoing dire financial situation plagued by ongoing losses, lack of capital
5 for basic investments needed to provide safe and adequate drinking water and Ms.
6 Olsen's receiving payments as an "independent contractor" of her own Company
7 demonstrates the Company is not operated in financially sound manner.⁵

8
9 The evidence presented at hearing overwhelmingly demonstrated that MRWC is not a "fit
10 and proper" entity to hold a CC&N.

11 12 **II. Staff's Opening Brief**

13
14 **A. Staff argues that the CC&N granted to MRWC by Decision No. 67583 is not**
15 **rendered null and void solely by the Company's failure to gain prior Commission**
16 **approval before entering into long-term debt.**

17
18 Intervenor/Complainant disagrees with Staff's conclusion for the following reasons.

19
20 ARS 40-252 gives the Commission the authority to reopen Decision No. 67583.

21
22 Decision No. 67583 explicitly authorizes future Commission's to declare the sale of the
23 company and transfer of the CC&N to be "null and void" if the Company fails to meet
24 the conditions listed in Paragraph 37 of the order. This is not mere window dressing but
25 was intended to put the Company on notice that it must comply with the conditions in
26 Paragraph 37 or the sale of the Company and transfer of the CC&N is null and void.

27
28 The fact that Montezuma Estates Property Owners Association (MEPOA) is not a party
29 to this matter, or may no longer be a functioning entity, does not waive the requirements
30 of Paragraph 37.

31
32 Evidence and testimony presented during the evidentiary hearing clearly shows that
33 MRWC encumbered the assets of the Company without prior Commission approval by
34 entering into a \$32,000 long term debt through a Deed of Trust⁶ and Promissory Note to
35 purchase a residential lot and subsequently installed expensive infrastructure⁷ on the
36 property including a 400-foot well, electrical service, piping, cement pads and fencing.

37
38 The Commission also has the authority enforce the provisions of Paragraph 37 of
39 Decision No. 67583 related to the MRWC's failure to maintain its books according to
40 NARUC standards.

41
42 The evidence presented at hearing shows the Company does not keep its books to
43 NARUC standards and that the Company's accountant, John Campbell, didn't know

⁵ Campbell, Testimony, Vol. III, Pg. 609, Ln. 22-25.

⁶ C-EX 70, Brunner Deed of Trust

⁷ C-Ex 87, 2007 Hookup Annual Report; C-Ex 88, 2006 Hookup Annual Report.

1 what NARUC represented.⁸ Mr. Becker recommended that the Company follow
2 NARUC standards, even though Decision No. 67583 imposed the same requirement
3 in 2005.

4
5 Staff acknowledges that Decision No. 67583 includes conditions that the Company not
6 encumber the assets of the utility in any way without prior Commission approval; and
7 that the order provides that violation of the established conditions will render the granted
8 approvals null and void.

9
10 Staff's argument does not address the fact supported by evidence and testimony that
11 MRWC entered into \$32,000 long-term debt (Brunner Loan) to purchase a residential lot
12 without Commission approval and subsequently installed expensive infrastructure
13 including a 400-foot well, electrical service and piping.

14
15 Instead, Staff asserts that Intervenor/Complainant does not include an allegation in the
16 Formal Complaint that the Company has violated Decision No. 67583 and therefore Staff
17 has "concerns" that MRWC was not adequately noticed that its CC&N might be
18 rescinded on this basis.⁹

19
20 Staff's assertion has no merit.

21
22 Intervenor/Complainant served notice to MRWC more than two years ago that Count
23 I of the complaint was based, in part, on violation of Decision No. 67583. Staff is
24 ignoring the plain reading of Count I of the Formal Complaint, which clearly includes
25 reference to Decision No. 67583, stating:

26
27 "Commission Decision No. 67583 states:

28 *MRWC shall not encumber the assets of the utility in any way without prior*
29 *Commission approval:*

30
31 *MRWC shall maintain its books and records in accordance with the NARUC*
32 *Uniform System of Accounts;*¹⁰

33
34 Next, Staff claims that the CC&N cannot be rescinded because the record of evidence
35 is that not only is MRWC providing adequate service, the service is superior to what
36 it was when MEPOA held the CC&N.

37
38 Staff ignores the fact that without construction of the ATF, MRWC was providing
39 inferior service to what was being provided by MEPOA because MRWC was forcing
40 customers to make appointments to obtain bottled water for more than two years.
41 Staff ignores the undisputed fact that MRWC was operating under a Consent Order
42 since June 2010 that required it to provide bottled water to its customers because the

⁸ Campbell, Testimony, Vol. III, Pg. 615, Ln. 13-15.

⁹ Staff's Closing Brief, Pg.13, Ln. 5-8.

¹⁰ Formal Complaint, Allegation I, W-04254A-11-0323, Aug. 23, 2011.

1 Company was in violation Arizona Department of Environmental Quality arsenic
2 standards.¹¹

3
4 MEPOA did not operate under a Consent Order nor was it ordered to provide an
5 alternative drinking water source to its customers.

6
7 Staff also ignores the fact that the only way MRWC came into compliance with the
8 ADEQ Consent Order is because it installed the Arsenic Treatment Facility (ATF)
9 using funding obtained by violating ARS 40-301, -302 by secretly signing Capital
10 Leases and failing to disclose them in violation of Procedural orders to avoid prior
11 Commission approval of long term debt.

12
13 Staff also ignores the fact the Company docketed purported personal lease agreements
14 with forged signatures as a placeholder as part of its deception of the Commission in
15 violation of ARS 40-303 (C).

16
17 The Company's illicit acts involving the leases came after the Company withdrew its
18 application for the WIFA loan because it did not want to pay for or conduct an
19 Environmental Impact Statement, was unable to obtain a private loan because of
20 ongoing operating losses due to excessive spending by the Company's owner on non-
21 utility related expenses,¹² and withdrew its request for an emergency rate increase
22 after staff stated the Company did not meet minimum standards for such relief.¹³

23
24 If not for the Company's illegal actions in violation of ARS 40-303(C) by purposely
25 misleading the Commission in the issuance of long-term debt, the Company would
26 have been unable to construct the ATF prior to the ADEQ June 7, 2012 deadline and
27 would therefore be continuing to provide inadequate service to its customers in
28 violation of the Arizona Supreme Court's ruling in James P. Paul Water Co. v. Ariz.
29 Corp. Com'n, Ariz. Supreme Ct. 671 P.2d 404, 1983.

30
31 Staff then raises the issue that there is no procedure in place to transfer the CC&N to
32 MEPOA or to Arizona Water Company, and therefore there is no remedy to
33 violations of Paragraph 37 in Decision No. 67583.

34
35 Intervenor/Complainant amended the Formal Complaint to request that an interim
36 manager be installed to operate MRWC and conduct a complete audit because of its
37 repeated violations of Commission regulations and state statutes.¹⁴ ACC executive
38 consultant Gerald Becker testified that the Commission has a "safety net" where it
39 can appoint an interim manager to run a utility.¹⁵

40

¹¹ A-EX 11, ADEQ Consent Order

¹² C-EX 106, Sunwest Bank Letter

¹³ Staff's Closing Brief, Pg. 6, Ln. 15-18.

¹⁴ Amended Formal Complaint, W-04254A-11-0323, Sept. 13, 2011.

¹⁵ Becker, Testimony, Transcript Vol. V, Pg. 1027, Ln 3-15.

1 The fact that MEPOA is not a party to the proceeding does not preclude the Commission
2 from declaring the sale and transfer of the utility and CC&N null and void.

3
4 In this instance, given the uncertainty over MEPOA's ability or willingness to take back
5 the Company, the Commission should install an interim manager to operate the company
6 and conduct a forensic audit of MRWC's books.

7
8 The Company's egregious misconduct in regards to the signing of the Capital Leases and
9 submission of invalid personal leases with forged signatures rises to the level of a Class 4
10 Felony by its apparent violation of ARS 40-303 (C).

11
12 Such misconduct reaches the threshold where an interim manager may be appointed. In
13 that role, the interim manager, acting as a trustee, could obtain an appraisal for the
14 company, and subsequently offer the utility's assets for sale for fair market value. The
15 proceeds of such a sale would be allocated to MRWC, thereby avoiding a regulatory
16 taking.

17
18 Ratepayers would benefit by the removal of a manager from a private service corporation
19 that is not a "fit and proper" entity to hold a CC&N.

20
21 **B. Staff states that the Commission has the authority "to make necessary**
22 **determinations for the well-being of public service corporations and their**
23 **ratepayers, including issuing retroactive approvals of debt incurred for the purpose**
24 **of complying with health and safety requirements."**

25
26 Staff claims the Commission has "often provided retroactive approval of debt" and then
27 cites six decisions from 1993 through 2012. During this 19-year period, it is fair to say
28 the Commission had issued hundreds of decisions. To state that the Commission
29 routinely turns to retroactive approval of long-term debt is misleading and unsupported.

30
31 Staff cites ARS 40-301(B), which states: "A public service corporation may
32 issue...evidences of indebtedness...only when authorized by an order of the
33 commission." Staff claims that because the statute does not expressly place a time limit
34 on the Commission's ability to grant such approval, the Commission has the authority to
35 retroactively grant the approval.

36
37 Staff offers no case law to support its assertion, nor does it address the fact that in cases
38 where the Commission has provided retroactive approval it routinely admonishes the
39 public service corporation to follow the law in the future by seeking prior Commission
40 approval.¹⁶

41 While there is no specific statute granting retroactive approval of long-term debt, the law
42 is very clear about the requirement for public service corporations to obtain Commission
43 approval before entering into long-term debt.

44
45 ARS 40-302 (A) states: "Before a public service corporation issues stocks and stock

¹⁶ Intervenor/Complainant's Closing Brief, Pg. 17, Ln. 7-46, Pg. 18, Ln. 1-18.

1 certificates, bonds, notes and other evidences of indebtedness, it shall first secure from
2 the Commission an order authorizing such issue and stating the amount thereof, the
3 purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion
4 of the commission, the issue is reasonably necessary or appropriate for the purposes
5 specified in the order, pursuant to 40-301, and that, except as otherwise permitted in the
6 order, such purposes are not, wholly or in part, reasonably chargeable to operative
7 expenses or income.”

8
9 ARS 40-301 (A) states the power of a public service corporation to issue...notes and
10 other evidences of indebtedness...is a special privilege, the right of supervision,
11 restriction and control of which is vested in the state.

12
13 There is nothing expressly stated in ARS 40-301 (C) that gives the Commission the
14 authority to ignore the fundamental requirement in ARS 40-302 (A) that a public service
15 corporation receive Commission approval before issuing notes or other evidences of
16 indebtedness.

17
18 ARS 40-301 (C) simply provides further standards the Commission must ensure are
19 present before approving long-term debt. This standards are meant to ensure the issuance
20 of he debt “is for lawful purpose”, is “compatible with the public interest”, follows
21 “sound financial practices”, that the public service corporation is “properly performing”
22 and that such debt will not “impair its ability to perform” its function.

23
24 None of these requirements provide the Commission with the authority to simply ignore
25 the fundament premise of ARS 40-302 (A) that the Commission must approve long-term
26 debt before a pubic service corporation incurs such debt.

27
28 Staff claims that reading ARS 40-301 and -302 to mean that the Commission is
29 proscribed from granting retroactive approval of debt would “mean the statutes are
30 unconstitutional.”¹⁷

31
32 Staff provides no case law to support its contention and instead cites Article XV, Section
33 3 of the Constitution as providing the “broad regulatory authority” for the Commission to
34 ignore ARS 40-301, -302 and retroactively approve long-term debt even though there is
35 no statute that expressly gives the Commission the authority to do so.

36
37 The Staff’s argument fails to overcome the fundament premise of ARS 40-302 (A) that
38 the Commission must approve long-term debt before a pubic service corporation incurs
39 such debt.

40 Staff also argues that the Constitution provides the Commission with plenary authority to
41 set rates and take any necessary step in the ratemaking process, including approving debt
42 that is to be funded by the rates the Commission approves.

43
44 In this instance, the MRWC used deceitful tactics to avoid approval of long-term debt in
45 the ARS 40-252 case that reopened Decision No. 71317 in Docket W-04254A-08-0361, -

¹⁷ Staff’s Closing Brief, Pg. 15, Ln. 10-12.

1 0362, and then, without the approval of the Commission, transferred its debt application
2 into the rate case that was filed on May 31, 2012.

3
4 But, in doing so, the Company's did not include in its rate application a request for
5 approval of the Capital leases until April 12, 2013, more than 13 months after the
6 Company secretly signed the agreements.¹⁸

7
8 Staff brushes over this fact in its Closing Brief stating: "Rather than renew efforts to
9 amend Decision 71317 to permit the Company's acquisition of new debt via the capital
10 leases it had entered into, MRWC filed a new general rate case..."¹⁹

11
12 The record further shows that the Company did not include in its general rate case
13 application docketed on May 31, 2012 any mention whatsoever of the secret Capital
14 Leases.²⁰

15
16 Staff then states that the Capital leases MRWC finally filed on April 12, 2013 were
17 merely "to correct the original financing applications" filed on May 30, 2012 rather than
18 "new financing applications."²¹

19
20 The Capital Lease agreements the Company filed on April 12, 2013, were not the full and
21 complete agreements. Instead, the Company filed an "unauthorized version" of the
22 Financial Pacific lease dated May 2, 2013²² and an incomplete copy of the Nile River
23 Lease that failed to include Rider No. 2.²³

24
25 The Company's request for retroactive approval of the Capital Lease was never included
26 in the Company's original financing application so therefore there was nothing to correct.
27 The request for retroactive approval of the Capital Leases is clearly a new financing
28 application that was shoehorned in, with Staff's approval, into the W-0454A-12-0204
29 consolidated docket.

30
31 Staff's strategy was to transfer approval of the Capital Leases out of the ARS 40-252
32 docket and into the rate case, where Staff and Company could then argue that the
33 Commission's broad ratemaking authority allows retroactive approval of long-term debt.

34
35 The Commission should bar the Company and Staff from this transparent attempt to
36 whitewash the Company's submission of personal leases with forged signatures as a
37 placeholder to meet the Procedural orders in W-04254A-08-0361, -0362, and then
38 pretend that the unauthorized and incomplete Capital Leases the company finally
39 submitted on April 12, 2013 were merely corrections of the Company's original May 31,
40 2012 rate application.

¹⁸ MRWC, Notice of Filing Rate Applications, W-04254A-12-0204, April 12, 2013.

¹⁹ Staff's Closing Brief, Pg. 8, Ln. 12-13.

²⁰ MRWC, Financing Applications, W-04254A-12-0204, 0205, 0206, 0207, May 31, 2012.

²¹ Staff's Closing Brief, Pg. 10, Ln. 13-16.

²² C-EX 22, Financial Pacific Letter.

²³ C-EX 20, Nile River Lease.

1 Staff's willingness to participate in this sham procedural maneuver does not serve the
2 public interest and denigrates the authority of this tribunal by providing cover to the
3 Company's intentional violation of Procedural orders²⁴ and submission of forged
4 documents in W-04254A-08-0361, -0362 and MRWC's subsequent failure to include the
5 actual Capital Leases in its rate application that was initially filed on May 31, 2012.

6
7 And, even if the Commission has the discretionary authority to retroactively approve
8 long-term debt, which Intervenor/Complainant believes it does not; the evidence and
9 testimony presented in this matter demonstrate the Company does not deserve to benefit
10 from the Commission's discretionary power.

11
12 This is not a situation where a small utility truly made a mistake and simply didn't
13 understand that it was required to obtain Commission approval for long-term debt.

14
15 Instead, this is a situation where the Company was on notice through Procedural orders,
16 pleadings and hearings that it was required to docket all lease agreements with the
17 Commission for prior approval. The Company intentionally violated the Commission
18 orders and docketed invalid personal leases with forged signatures while hiding the true
19 Capital Leases signed by the Company for more than a year.

20
21 Such action should not now be rewarded with retroactive approval of long-term debt
22 under any circumstance.

23
24 **C. Staff states the Commission has a wide array of authority to enforce compliance**
25 **with its rules and orders that may apply as appropriate to MRWC, Ms. Olsen or**
26 **both.**

27
28 Intervenor/Complainant agrees with Staff's position that the Commission has the
29 authority to issue fines pursuant to its statutory and constitutional authority.

30
31 Intervenor/Complainant also agrees with Staff's position that "a procedural order may
32 constitute an order of the Commission in the sense that an ALJ is acting on behalf of the
33 Commission pursuant to a delegation of authority to conduct hearings for the
34 Commission."²⁵

35
36 Intervenor/Complainant disagrees with Staff's decision not to seek enforcement because
37 the Company is making efforts to come into Compliance. Staff states: "Pursuing
38 enforcement in this context would send a message that Staff assists struggling utilities
39 only to assail them when they are on the precipice of achieving compliance."²⁶

40
41 Intervenor/Complainant strongly believes that by not pursuing enforcement in this case,
42 where the evidence of misrepresentation and deception by MRWC is indisputable, the
43 Commission will send a clear message to public service corporations throughout Arizona,

²⁴ MRWC Closing Brief, Pg. 58, Ln. 13-14.

²⁵ Staff's Closing Brief, Pg. 16, Ln. 15-17.

²⁶ Staff's Closing Brief, Pg. 17, Ln. 1-3.

1 that violation Commission procedural orders and the intentional docketing of false and
2 misleading, statutorily required information, in order further the objections of the
3 Company, is an acceptable standard of conduct that carries no risk of penalty or loss of
4 the CC&N.

5
6 Staff's position to forego enforcement of clear violations of procedural orders and
7 statutes by ignoring MRWC's submission of invalid personal lease agreements with
8 forged signatures to avoid prior Commission approval of Capital Leases does not meet
9 the standards set in *James P. Paul*.²⁷

10
11 "Once certified to supply water to a parcel of land, a water company must comply
12 with orders and regulations promulgated by the Commission in the public interest..."

13
14 The Commission's failure to take the strongest possible enforcement actions against a
15 Company that knowingly and intentionally engaged in conduct meant to deceive the
16 Commission on the issuance of long term debt is a violation of ARS 40-303 (C) and the
17 Commission should vigorously pursue felony charges against the Company.

18
19 Aggressive enforcement of such misconduct would send a clear message to public service
20 corporations that in order to benefit and maintain their monopoly power provided to them
21 through a CC&N, they must comply with all regulations, statutes and Commission
22 orders.

23 24 **D. Staff's Analysis of Complaint Issues**

25
26 After more than two years active participation as an Intervenor and Complainant, Staff is
27 now claiming that Intervenor/Complainant "lacks standing to pursue any claims based on
28 the Commission's rate or financing based approvals."²⁸

29
30 Staff states that because Intervenor/Complainant is not a ratepayer of MRWC he does not
31 suffer an "injury in fact" by the Commission's approval for the Company to charge a rate
32 or debt to finance the plant.

33
34 Staff has waited until this moment to make this claim after an extraordinary, five-day
35 evidentiary hearing for a Class D utility that has resulted in considerable expense for all
36 parties. The Company is now seeking \$92,725.50 in legal fees as part of its rate case
37 expense.²⁹

38
39 Staff's assertion, which is repeated in Staff's response to each of the allegations in the
40 Complaint, is unsupported and has no merit.

41
42 ARS 40-246 states that "Complaint may be made by the commission of its own motion,
43 or by any person or association of persons by petition or complaint in writing, setting

²⁷ James P. Paul Water Co. v. Ariz. Corp. Com'n, Ariz. Supreme Ct. 671 P.2d 404, 1983

²⁸ Staff's Closing Brief, Pg. 26, Ln. 11-13.

²⁹ MRWC Closing Brief, Pg. 9, Ln. 7-8.

1 forth any act or thing done or omitted to be done by any public service corporation in
2 violation, or claimed to be in violation, of any provision of law or any order or rule of the
3 commission...”
4

5 There is no question that Intervenor/Complainant lives in MRWC’s service area. And
6 there is no question that Intervenor/Complainant could apply for service to MRWC at any
7 time and that MRWC must provide that service upon receipt of required deposits and an
8 application for service under R14-2-403.
9

10 Furthermore, the Commission stated in a Formal Complaint filed by Stanley and Stella
11 Gorodenski vs. Qwest Corp., T-01051B-08-0248 that it is not necessary to be a
12 ratepayer in order to have standing under ARS 40-246(A).
13

14 *“In light of this statutory language, Mr. Gorodenski has standing to file with*
15 *the Commission a complaint asserting that Qwest has violated a statute, rule,*
16 *or order of the Commission. That Mr. Gorodenski was not, at the time the*
17 *charges were incurred, a subscriber for the TN does not negate his authority*
18 *to file a complaint under A.R.S. 40-246(A).”³⁰*
19

20 Intervenor/Complainant has met the threshold set in ARS 40-246(A) to have standing in
21 this consolidated docket.
22

23 **E. Complaint Counts**

24 **Count I**

25
26
27 Staff claims that it is “unclear” that the \$32,000 acquisition of the lot on which Well No.
28 4 is situated involved long-term debt. This assertion is not supported by the evidence and
29 testimony presented at the hearing.
30

31 Intervenor/Complainant presented substantial evidence during the hearing that was
32 included in the Closing Brief and are included here by reference.³¹
33

34 The Company signed a deed of trust and a promissory note to purchase the property and
35 subsequently failed to disclose the information on Annual Reports between 2005 and
36 2009.³² Patricia Olsen and John Campbell both testified that the information was not
37 disclosed in the Annual Reports from 2005-2010.^{33 34} The debt was not satisfied until
38 after Intervenor/Complainant disclosed its existence in a July 2011 filing.³⁵
39

³⁰ Procedural Order, T-01051B-08-0248, July 18, 2008.

³¹ Intervenor/Complainant, Closing Brief, Pg. 6, Ln. 3-Pg. 8, Ln. 34.

³² C-Ex 70, Deed of Trust.

³³ Evidentiary Hearing, Vol 1, Pg 175, Ln 3-15.

³⁴ Evidentiary Hearing, Vol 3, Pg 570, Ln 8-15.

³⁵ Intervenor’s Motion for Show Cause, W-04254A-08-0361, 0362, July 20, 2011.

1 There is no evidence presented whatsoever during the hearing that this was not a long-
2 term debt entered into by MRWC without prior Commission approval, nor does Staff
3 provide any citation or evidence to support its contention that the Deed of Trust was not
4 long-term debt.

5
6 Staff states that MRWC's annual reports are simply "unaudited" snapshots of a utility's
7 condition. Staff then states that staff does not "rely on the annual report when
8 undertaking a regulatory audit".³⁶

9
10 Staff then states that any alleged inaccuracy of the annual reports is "not material". It
11 goes on to state that the only entity harmed by filing inaccurate annual reports is the
12 Company.

13
14 Commission regulations for water utilities for reporting their financial condition require
15 the reporting of "complete and authentic" information on property and operations.
16 Utilities are required maintain their books according to NARUC and must file Annual
17 Reports.

18
19 R14-2-411 D (1) states that a water "utility shall keep general and auxiliary accounting
20 records reflecting the cost of its properties, operating income and expense, assets and
21 liabilities, and all other accounting and statistical data necessary to give complete and
22 authentic information as to its properties and operations."

23
24 R14-2-411 D (2) states, "Each utility shall maintain its books and records in conformity
25 with the NARUC Uniform Systems of Accounts for Class A, B, C and D Water Utilities."

26
27 MRWC is required under R14-2-411 D (4) to submit annual reports to the Commission
28 by April 15 for the proceeding calendar year.

29
30 Therefore, there is no question that MRWC is required by these regulations to provide
31 "complete and authentic" information and that its books conform to NARUC standards. It
32 is more than reasonable to expect that the Annual Reports will reflect the "authentic"
33 financial condition of the company, and not a mere estimate that Staff can go back and
34 decipher at a later date.

35
36 Staff also ignores the fact that the Annual Reports are the only way ratepayers and the
37 public can review the operations of a monopoly utility that is granted a CC&N by the
38 Commission.

39 Staff's claim that Annual Reports simply don't matter is another instance in which the
40 Staff is sending a signal that is detrimental to the public interest and the Commission's
41 integrity by stating that filing false and misleading Annual Reports is an acceptable
42 practice.

43
44 Staff's claim that there is no evidence there was a willful attempt to deceive staff fails on
45 the fact that the Annual Report forms filed by MRWC clearly state that Long Term debt

³⁶ Staff's Closing Brief, Pg. 29, Ln. 4-5.

1 is debt "Over 12 Months".³⁷ Ms. Olsen testified that she approved and signed the Annual
2 Reports on behalf of Montezuma and is responsible for the accuracy of the reports.³⁸

3
4 **Count XVII**

5 **The Company violated ARS 40-301, -302, -424 and -425 by incurring debt by**
6 **entering lease agreements without first obtaining Commission approval.**

7
8 Intervenor/Complainant provided evidence and testimony supporting Allegation XVII in
9 the Closing Brief, and are included by reference.³⁹

10
11 Staff states, "until such approval is granted, the Company could be viewed as having
12 violated ARS 40-301 and -302."

13
14 Once again, Staff is attempting to obscure a clear violation of statute. There is no
15 question that the Company has violated ARS 40-301 and -302. The Company admits it
16 did not obtain Commission approval of long-term debt and repeatedly apologizes for
17 what it calls a "mistake".

18
19 *"Ultimately, MRWC realizes it made a mistake when it didn't seek prior approval*
20 *of those leases and failed to file copies in the pending dockets..."⁴⁰*

21
22 The Company's admission that it failed to obtain Commission approval before it issued
23 long-term debt requires the Commission to declare the long-term Capital leases void. A

24
25 ARS 40-303 (A) states: "All stock and every stock certificate, and every bond,
26 note or other evidence of indebtedness of a public service corporation, issued
27 without a valid order of the commission authorizing the issue...is void."

28
29 Not only did the Company fail to obtain prior approval of the Capital Leases, the
30 evidence shows MRWC docketed personal lease agreements with forged signatures to
31 deceive the Commission into believing that Ms. Olsen had signed personal leases to
32 acquire the ATF equipment in order to avoid prior Commission approval.⁴¹

33
34 This is a clear violation of ARS 40-303 (C) (2,3)

35 C. A person is guilty of a class 4 felony who:

36 2. In any proceeding before the commission knowingly makes any false statement
37 or representation, or, with knowledge of its falsity, files or causes to be filed with
38 the commission any false statement or representation, which may tend to

³⁷ C-Ex, 32 (2009 Annual Report); C-Ex 33 (2008 Annual Report); C-Ex 34 (2007 Annual Report); C-Ex 35 (2006 Annual Report); C-Ex 36 (2005 Annual Report); C-Ex-27 (2010 Annual Report); C-Ex 26 (2011 Annual Report) and C-Ex 25 (2012 Annual Report)

³⁸ Evidentiary Hearing, Vol 1, Page 183, Ln 9-15

³⁹ Intervenor/Complainant, Closing Brief, Pg. 19, Ln. 40-Pg. 24, Ln. 28.

⁴⁰ MRWC, Closing Brief, Pg. 8, Ln. 16-18.

⁴¹ C-EX 18, Affidavit of John Torbenson, C-EX 19, Affidavit of Robin Richards.

1 influence the commission to make an order authorizing the issue of any stock or
2 stock certificate, bond, note or other evidence of indebtedness, or which results in
3 procuring from the commission the making of any such order.

4 3. With knowledge that any false statement or representation was made to the
5 commission in any proceeding tending in any way to influence the commission to
6 make such order, issues, executes or negotiates, or causes to be issued, executed
7 or negotiated any stock or stock certificate, bond, note or other evidence of
8 indebtedness.

9 MRWC's illegal conduct all occurred after the Commission had issued three Procedural
10 orders requiring the Company to docket all lease agreements signed by Ms. Olsen or the
11 Company to acquire the ATF.

12
13 The fact that the Company is now seeking retroactive approval of the Capital Leases does
14 not override the fact the Company did not and does not have prior Commission approval
15 to enter the Capital Leases nor does it eliminate the clear violation of statutes that has
16 already occurred.

17
18 **F. Staff's Rate Case Recommendations**

19
20 Staff's Rate Recommendations have no merit on the basis that the Company is not in
21 compliance with the Commission's statutes and regulations based on its clear violation of
22 ARS 40-301, -302 and -303 in connection with the failure to obtain Commission approval
23 for the Capital Leases and the docketing of personal lease agreements with forged
24 signatures.

25
26 Administrative Law Judge Sarah Harpring raised this issue during the evidentiary hearing
27 when she questioned Mr. Becker.

28
29 *Q. "If the Commission were not to grant retroactive approval of those leases, how*
30 *would that affect, in your opinion, how would that affect the company's financial*
31 *situation? And before you answer that, actually consider in your response*
32 *whether the Commission would ever include in rate base or ever has included in*
33 *rate base plant for which long-term debt has not been approved."*

34
35 Mr. Becker: "Well, the first part of the question is about not approving the, not
36 giving the company retroactive approval of the debt. I think that would keep the
37 company in noncompliance. And then I mean there are -- and we, you know we on
38 Staff, we do check compliance before we recommend rate increases. So it could
39 really be detrimental to them."

40
41 *Q. "In what way would it be detrimental?"*

42
43 *A. "Well, if the Commission were not inclined to grant a rate case because of the*
44 *noncompliance, she would never be able to get a rate increase, and then, I am not*

1 an attorney, but whatever legal penalties might be attached to not complying with
2 the statutes."⁴²

3
4 MRWC is not in compliance with Commission statutes and regulations.
5 Intervenor/Complainant has repeatedly requested that the Commission to deny retroactive
6 approval of the Capital Leases.

7
8 If this request is granted, the Company will remain in noncompliance with Commission
9 regulations and state statutes, and therefore MRWC's request for a rate increase and
10 approval of financing applications in this consolidated docket should all be denied.

11
12 **G. Staff's Paternalist Protection of MRWC**

13
14 Commission throughout this proceeding has taken a paternalist attitude that its primary
15 responsibility is to help MRWC come into compliance with Commission orders and
16 regulations and state statutes, even when the Company commits intentional and deceptive
17 actions in violation of Commission orders and statutes.

18
19 Staff mischaracterizes compliance with Procedural orders and, in this case, compliance
20 with ARS 40-301, -302, as merely "paperwork".

21
22 Mr. Dougherty: "Do you think it is reasonable, Mr. Becker, for a company to
23 ignore procedural orders of this court?"

24
25 Mr. Becker: "Under certain circumstance I think there has to be an order of
26 priority. And if getting the plant in had to come before getting the paperwork
27 done, it is reasonable."⁴³

28
29 Under questioning from Judge Harpring, Mr. Becker, agreed that Staff does not have the
30 authority to decide whether or not a company's potential noncompliance with a
31 Procedural Order should be forgiven.⁴⁴

32
33 Despite Becker's testimony above, Mr. Becker testified that Staff has already provided
34 tacit forgiveness for the Company's intentional failure to abide by the Procedural orders
35 and ARS 40-301, -302 and its earlier submission of personal leases with forged
36 signatures, which Mr. Becker describes as "incorrect leases."

37
38 "For our purposes, we think the final ones (Capital Leases) were adequate for
39 our purposes. And we used that as our basis. We pretty much are not concerned
40 that the she had – that there were some incorrect leases filed previously."⁴⁵

41

42 Becker, Testimony, Transcript Vol. V, Pg. 1044 Ln 20-25, Pg. 1045, Ln. 1-17

43 Becker, Testimony, Vol. IV, Pg. 927, Ln. 19-24.

44 Becker, Testimony, Vol. IV, Pg. 931, Ln. 12-15.

45 Becker, Testimony, Vol. V, Pg. 1053, Ln. 23-25, Pg. 1054, Ln. 1-2.

1 Staff is whitewashing the Company's deliberate acts of docketing the personal leases as
2 placeholders in W-04254A-08-0361, -0362, leases that were never in effect, as merely
3 incorrect leases.

4
5 Staff has defended the Company's failures and illicit actions at every turn and adopted
6 the Company's mantra that Intervenor/Complainant is harassing MRWC and engaged in
7 a vendetta.

8
9 Mr. Becker's strong bias in favor of the Company and against Intervenor/Complainant
10 was evidenced in his testimony regarding attorney fees in connection with a frivolous
11 harassment injunction filed by Ms. Olsen personally that was later dismissed by the
12 Justice Court because Ms. Olsen was abusing the order.⁴⁶

13
14 *Q. Why is that being included in the, in your outside expenses?*

15
16 *A. Well, apparently she felt afraid of you and felt it necessary to get a*
17 *restraining order against you. And I would say it is in order for her to run*
18 *her company.*⁴⁷

19
20 Mr. Becker testified that he made the assumption that it was necessary in order for Ms.
21 Olsen to run the company without looking at the lawsuit.

22
23 *Q. Where do you get that inference in her ability to run her company?*

24
25 *A. Because I think if she feels afraid of you or anybody else I think she --*
26 *she did what she had to do, based on what I see here, in order so that she*
27 *could feel comfortable in running and owning and operating her company.*
28 *I -- never mind.*

29
30 *Q. Is the Utilities Staff taking a paternalistic view of protecting and*
31 *allowing the expenses of a private person who runs this company?*

32
33 *A. No.*

34
35 *Q. But you are including \$742 of legal expenses?*

36
37 *A. That's correct.*⁴⁸

38
39 Staff's bias in favor of protecting an arguably corrupt public service corporation extends
40 to Mr. Becker's recommendation that even if the Commission refuses to retroactively
41 approve the Capital Leases, that the Company be provided enough funds to pay the
42 Capital Leases anyway.⁴⁹

⁴⁶ C-EX-109.

⁴⁷ Becker, Testimony, Vol. IV, Pg. 919, Ln. 13-17.

⁴⁸ Becker, Testimony, Vol. IV, Pg. 919, Ln. 16-25, Pg. 920, Ln. 1-3.

⁴⁹ Becker, Testimony, Vol. V, Pg. 1084, Ln. 15-25, Pg. 1085, Ln. 1-23.

1 Mr. Becker's recommendation completely undermines the statutory requirement for a
2 public service corporation to obtain prior Commission approval of long-term debt. It does
3 so by providing a regulatory back door to provide a company enough revenue to pay for
4 long-term debt *even* if the Commission refuses to approve such debt.

5
6 Incredibly, Mr. Becker makes this recommendation despite testifying that if the
7 Commission refuses to provide retroactive approval of the Capital Leases, MRWC will
8 not be in Compliance with Commission statutes and regulations.

9
10 Staff does not have the statutory authority to override the Commission's decision on
11 whether to retroactively approve long-term debt by allocating sufficient operating
12 revenues to cover the debt payments that the Commission has refused to authorize. This
13 case presents an opportunity for the Commission to send a clear and direct signal to Staff
14 that it is the Commission that has the statutory authority to approve long-term debt and
15 that Staff must enforce the Commission's decision.

16
17 Staff's bias that it should be helping struggling public service corporations come into
18 compliance should not blind Staff to legitimate complaints supported by evidence and
19 testimony that in this matter ultimately demonstrates that MRWC is not a "fit and proper"
20 entity that should be granted a CC&N to operate a public utility and trusted to provide the
21 public safe drinking water.

22 23 **III. MRWC's Closing Brief**

24 25 **A. Introduction**

26
27 MRWC's entire rate case rests on the Commission's decision on whether to retroactively
28 approve the Capital Leases the Company secretly entered into on March 22, 2012, in
29 direct defiance of three Procedural orders.⁵⁰

30
31 The Company's scheme to hide the fact it entered into the Capital Leases was facilitated
32 by the submission of two personal lease agreements with forged signatures to make it
33 appear that Ms. Olsen, rather than MRWC, entered into the agreements, and thereby
34 Commission approval of the debt was unnecessary.

35
36 This was done to avoid seeking Commission approval of MRWC's Capital Leases in
37 docket W-04254A-08-0361, -0362. The Company wanted to avoid the Commission
38 approval process that would have taken many months, at a minimum, because it was
39 facing imminent penalties with fines as much as \$150,000 from the ADEQ for failing to
40 install the ATF under the terms of a 2010 Consent Order.⁵¹

41 MRWC admits that it failed to disclose the Capital Leases to the Commission for prior
42 approval.⁵²

43

⁵⁰ C-EX 20, Nile River Lease, C-EX 22, Financial Pacific Lease.

⁵¹ Evidentiary Hearing, Vol V, Pg 1016, Ln 15-21

⁵² A-EX 2, Olsen Direct Testimony, Pg 13, Ln 22-23.

1 The Company claims that it was simply a “mistake” and repeatedly “apologizes” to the
2 Commission for its action.

3
4 After admitting it violated ARS 40-301, -302, the Company claims it was harmless
5 violation because no one was harmed.

6
7 “The Company’s failure to seek prior approval of that debt from the Commission did not
8 harm customers or the Commission in any way, shape or form,” the Company argues..⁵³

9
10 The Company claims retroactive approval of the leases is in the public interest because
11 the leases were used to finance the installation of the ATF.

12
13 The Company’s intentional violation of Commission Procedural Orders, in fact, inflicts
14 serious harm to customers and the Commission and must not be dismissed as a mere
15 “paperwork” violation.

16
17 The Company’s deceptive and illegal actions were deliberately undertaken to force the
18 Commission into making a difficult choice between enforcing its laws and regulations
19 and therefore the integrity of the agency, or retroactively approving the debt that supports
20 the ATF, which, in turns provides safe drinking water to the public.

21
22 The Commission must reject this strong-arm tactic that is an attempt to undermine the
23 Commission’s authority to regulate public service corporations under Article 15, Section
24 3 of the Constitution to achieve the goals of a mismanaged, under capitalized company
25 that had failed to meet ADEQ arsenic standards since it acquired the utility in 2005.
26 In fact, the Commission has no choice but to enforce its law and regulations. To do
27 otherwise would be an arbitrary and capricious decision that is not supported by the facts
28 presented at hearing and the Company’s admission it violated ARS 40-301, -302 and the
29 Procedural orders.

30
31 Furthermore, the potential damage to ratepayers is a red herring. If the Commission
32 refuses to retroactively approve the Capital Leases, for which there is no clear statutory
33 authority granting such approval, MRWC will not be compliance with Commission rules
34 and statutes and therefore unable to obtain a rate increase.

35
36 Ratepayers benefit from that being burdened with a rate increase.

37
38 If MRWC can no longer financially afford to pay for the Capital Leases because of its
39 failure to abide by Commission orders, as it is required by law to do, than MRWC will
40 have to find either additional capital to pay for the ATF, or sell the assets of the Company
41 to a financial entity capable of providing adequate water service at a reasonable rate as
42 required by the *James P. Paul*.

43
44 If MRWC cannot raise additional capital, or refuses to offer the Company for sale, then it
45 must face the consequences of its business decisions. Staff has no statutory authority to

⁵³ MRWC, Closing Brief, Pg. 8, Ln. 18-19.

1 assist the Company in its operational decisions by failing to enforce Commission
2 regulations and statutes, nor does Staff have the authority to facilitate the Company's
3 business by the actions by ignoring the clear violation of Procedural Orders and ARS 40-
4 303(C) violations.

5
6 If faced with the possibility of MRWC defaulting on the ATF leases, the Commission has
7 the authority to order a Show Cause hearing to determine whether an interim manager
8 should be installed. A competent manager would have far more leverage to negotiate a
9 solution with the leasing companies to allow the ATF facility to operate than would Ms.
10 Olsen.

11
12 If MRWC elects to cease payments on the Capital Leases and the vendors repossess the
13 Company's ATF equipment, MRWC will be in violation of ADEQ statutes and would
14 face a possible \$150,000 fine,⁵⁴ an occurrence that would likely bankrupt the Company.
15 But it is not the Commission's responsibility to assist corrupt Companies that fail to meet
16 regulatory standards by ignoring Procedural orders, Commission regulations and state
17 statutes and dismissing them as merely paperwork.

18
19 Intervenor/Complainant believes the only legal option the Commission has given the
20 circumstances and facts in this case is to refuse to retroactively approve the Capital
21 Leases and dismiss MRWC's rate case and financing applications because the Company
22 is not in compliance with ACC rules and statutes.

23 24 **B. Rate Case Expenses.**

25
26 MRWC is seeking \$92,725.50 in legal fees to be included in the rate case.

27
28 Intervenor/Complainant believes none of the legal fees are the responsibility of
29 ratepayers given the facts of this case.

30
31 Ms. Olsen stated in her direct testimony that she didn't inform Counsel that she was
32 signing the Capital Lease agreements.⁵⁵

33
34 It is unknown when Counsel learned that MRWC had in fact signed the Capital Leases.
35 But there is no question that MRWC continued to file briefs in W-04254A-09-0361, -
36 0362 in April 2012 arguing that the "personal leases" signed by Ms. Olsen were the true
37 and effective leases.

38
39 The scheme to deceive the ALJ and Intervenor/Complainant carried over to the rate
40 application that was initially filed by Ms. Olsen personally. The Company did not reveal
41 that it had signed Capital Leases until October 26, 2012. And then the information was
42 incomplete and deceptive.⁵⁶

⁵⁴ Becker, Testimony, Vol. V, Pg. 1029, Ln.10-15.

⁵⁵ A-EX 2, Olsen Direct Testimony, Pg 12, Ln 13-16.

⁵⁶ C-EX 12, MRWC Dockets Leases.

1 If the Commission refuses to retroactively approve the Capital Leases and dismisses the
2 rate and financing applications because the Company is not in Compliance with state
3 statutes, then MRWC's legal fees are no longer the responsibility of ratepayers, but
4 instead, are the responsibility of MRWC.
5

6 **C. MRWC's Characterization of Intervenor/Complainant as a "Bad Actor"**
7

8 MRWC attacks Intervenor/Complainant for exercising his legal rights to question and
9 challenge the actions of Public Service Corporation. Intervenor/Complainant has had
10 legitimate grounds to do so because of the repeated violations of state and county laws
11 and ordinances and misrepresentations by the Company.
12

13 MRWC did not have a valid use permit to operate a business on Well No. 4.
14 Intervenor/Complainant filed a complaint with Yavapai County and the County issued a
15 Notice of Violation against the company for an unpermitted use on a residential lot.⁵⁷
16

17 MRWC's ongoing violations in Yavapai County resulted in a \$5,000 levied earlier this
18 year for failing to clear certain property from Well Site No. 4 to comply with a hearing
19 officer's order.⁵⁸
20

21 MRWC provided misleading information to WIFA in connection with a \$165,000 loan
22 for the ATF by failing to disclose certain information on a Categorical Exemption
23 statement.⁵⁹
24

25 Intervenor/Complainant informed WIFA that MRWC's Well No. 4 is in close proximity
26 to Wet Beaver Creek and Montezuma Well National Monument and that MRWC did not
27 have a valid use permit for Well No. 4. WIFA rescinded the categorical exemption to the
28 National Environmental Policy Act and eventually required MRWC to conduct additional
29 studies.⁶⁰
30

31 WIFA made the determination that an Environmental Impact Statement would be
32 required before it would fund the \$165,000 loan, not Intervenor/Complainant, who has
33 not authority to do so.
34

35 Intervenor/Complainant filed a lawsuit in Yavapai County against MRWC and Yavapai
36 County for failing to consider the Yavapai County Water Well Code when the County
37 Board of Supervisors issued a conditional use permit to MRWC to use Well site No. 4 for
38 business uses.
39

⁵⁷ C-EX 1, Yavapai County NOV.

⁵⁸ C-EX 47, Yavapai County \$5,000 fine.

⁵⁹ C-EX 6, WIFA Categorical Exemptions.

⁶⁰ C-EX 30, WIFA emails.

1 The conditional use permit required MRWC to first meet all federal, state and county
2 rules and laws. MRWC's Well No. 4 failed to meet the 50-foot setback requirement in
3 the county water well code, so therefore has been unable to operate Well No. 4.⁶¹

4
5 MRWC's problems with Yavapai County concerning the use permit and WIFA
6 concerning the \$165,000 loan and subsequent requirement to conduct an EIS are the
7 direct result of MRWC's failure to comply with the regulations of both agencies.

8
9 If Intervenor/Complainant's complaints to both agencies had no merit, neither agency
10 would have pursued the course of action each followed.

11
12 MRWC argues that Intervenor/Complainant's actions are not in the best interest of
13 MRWC's customer. The argument has no merit.

14
15 Intervenor/Complainant's actions before this Commission and elsewhere have revealed a
16 poorly managed company, that repeatedly ignores rules and regulations, that retaliates
17 against citizen's who challenge the company with frivolous lawsuits and false claims to
18 the police,^{62, 63}. Intervenor/Complainant's investigation has show that Ms. Olsen has used
19 the company to divert funds to pay for excessive personal expenses, has failed to provide
20 adequate service for years on end and intentionally violates Commission orders and
21 docketed lease agreements with forged signatures to avoid Commission approval of long
22 term debt.

23
24 Intervenor/Complainant believes this information is of significant value to ratepayers and
25 the Commission as it reveals that MRWC is not a "fit and proper" entity to hold a CC&N
26 and operate a public utility.

27
28 MRWC cites Mr. Becker's testimony stating that "it is just not everybody's best interest
29 to set up a company to basically have a problem or avoidable distress, in our opinion,"⁶⁴
30 as support for his contention that Intervenor/Complainant has abused MRWC. This
31 argument turns the facts on their head.

32
33 Intervenor/Complainant has merely exposed MRWC's gross misconduct. What Staff and
34 the Company would obviously prefer is that Intervenor/Complainant not rock the boat
35 and shed light on the misdeeds of this company.

36
37 **D. MRWC's Claim the Commission Cannot Lawfully Rescind Ms. Olsen's**
38 **Acquisition of The Company.**

39
40 MRWC's claim that the Brunner Loan did not encumber any "used and useful asset of
41 MRWC" has no merit.

⁶¹ Dougherty Testimony, Vol. III, Pg. 647, Ln 9-15.

⁶² C-EX 50, Yavapai County Police Report.

⁶³ C-EX 103, City of Flagstaff Police Report.

⁶⁴ Becker Testimony, Vol. IV, Pg. 1022, Ln. 6-10.

1 The company provides no support for its claim that Paragraph 37 was restricted on only
2 "used and useful" assets but instead relies merely on Ms. Olsen's unsupported assertion
3 that someone in Staff told her in 2005 that the "current assets of the water company could
4 not be encumbered."⁶⁵

5
6 MRWC then asserts that under ARS 40-285 (A, C) the Company's ability to encumber
7 "future assets of the Company without Commission approval would depend on whether
8 those assets are used in providing utility service to the company."

9
10 The Company states "MRWC's acquisition of the Well No. 4 property did not violate
11 Decision 67583 because the transaction did not encumber any used or useful asset of the
12 Company."

13
14 This argument has no merit. MRWC submitted financings applications in this docket for
15 Ms. Olsen to be repaid by the company approximately \$16,000 for her investment in
16 Well No. 4 property. The Company has invested more than \$100,000 in Company funds
17 in developing the infrastructure for Well No. 4 on the lot that was encumbered by the
18 Brunner Deed of Trust.

19
20 Well No. 4 is not surplus property that the Company wishes to dispose of and the
21 Company has every intention of bringing Well No. 4 on line as soon as it obtains a use
22 permit from Yavapai County and an Approval of Construction from ADEQ.

23
24 ARS 40-285 (C) states: "Nothing in this section shall prevent the sale, lease or other
25 disposition by any such corporation of property which is not **necessary** or useful in the
26 performance of its duties to the public."

27
28 The Company has argued for years that Well No. 4 is a necessary part of the company.
29 The Company attaches in its Closing Brief an exhibit showing the company has obtained
30 an easement on a neighboring property that may allow it to come into compliance with
31 the Yavapai County Water Well Code.⁶⁶

32
33 Only if MRWC stipulates that it will immediately dispose of Well No. 4 and will never
34 seek permission from the Commission to include it in the rate base, would the
35 Company's claim that property is not used or useful and necessary have merit.

36
37 Intervenor/Complainant would welcome such a stipulation and withdraw from any
38 further intervention with MRWC.

39
40 MRWC then offers similar argument as Staff as to procedural issues that may arise if the
41 sale and transfer of the CC&N were declared Null and Void under Decision No. 67583.
42 Intervenor/Complainant reiterates its claim stated above that an interim manager could be
43 installed – and if the company is found to be guilty of ARS 40-303 (c) – the interim

⁶⁵ MRWC Closing Brief, Pg. 64, Ln. 17-20.

⁶⁶ MRWC Closing Brief, Exhibit A.

1 manager could sell the Company's assets for fair market value and gives the proceeds to
2 MRWC, thereby avoiding a regulatory taking.

3
4 **E. The Commission Has Authority to Retroactively Approve the Nile River and**
5 **Financial Pacific Leases.**

6
7 The Company's claims that the Commission has the authority to retroactively approval of
8 long-term debt are essentially the same as Staff's.

9
10 Intervenor/Complainant restates its argument provided in Part II, Section B in response to
11 Staff's claim that the Commission has the authority to retroactively approve long-term
12 debt.

13
14 **F. The Commission has Limited Authority to Impose Fines Against MRWC**

15
16 The Company argues that the Commission has "limited authority" to impose fines on
17 MRWC and does not have the authority to impose fines on Ms. Olsen personally.

18
19 Intervenor/Complainant disagrees for the reasons stated in Part II, Section B.

20
21 The Company's claim that MRWC "did not have any ulterior or improper motives
22 relating to filing the approvals of the lease agreements and violations of the ALJ's
23 procedural orders" has no merit.

24
25 The evidence clearly shows MRWC intentionally and knowingly deceived the
26 Commission by the submission of the personal leases with forged signatures.

27
28 The Company's claim that the contempt authority in ARS 40-424 "is not intended for this
29 type of procedural or filing error" misconstrues the evidentiary record and attempts to
30 paint a devious and intentional act as a mere mistake.⁶⁷

31
32 ARS 40-424 (A) provides that "if any corporation or person fails to observe or comply
33 with any order, rule or requirements of the commission or any commissioner, the
34 corporation or person shall be in contempt of the commission..."

35
36 The record shows that both MRWC and Ms. Olsen, personally, failed to observe or
37 comply with commission orders. Neither the Company, nor Ms. Olsen, disclosed to the
38 Commission that the "personal leases" signed by Ms. Olsen were invalid and were never
39 effective. Nor did the Company in a timely manner disclose that it had in fact signed

⁶⁷ MRWC Closing Brief, Pg. 72, Ln. 21-22.

1 Capital Leases for the ATF equipment on March 22, 2012 and instead withheld the true
2 and complete leases from the Commission for more than a year.

3
4 Both Ms. Olsen and MRWC should be held in contempt on multiple counts including, but
5 not limited to:

6
7 Ms. Olsen: 1. Docketing the Nile River Lease for the ATF building that she
8 signed personally on or about March 16, 2012 when she knew it was invalid and
9 never the true and correct lease.

10
11 2. Docketing the Nile River Lease for the ATF equipment that she signed
12 personally on or about March 16, 2012 when she knew it was invalid and never
13 the true and correct lease.

14
15 3. Docketing the unauthorized version of the Financial Pacific Lease in Docket
16 No. W-04254A-08-0361, 0362 on or about Oct. 26, 2012.

17
18 4. Docketing an incomplete Nile River Lease that failed to include Rider No. 2 in
19 Docket No. W-04254A-08-0361, 0362 on or about Oct. 26, 2012.

20
21 MRWC: 1. Failure to docket the true and correct Financial Pacific Capital Lease
22 for the ATF equipment signed by the Company on March 22, 2012 and Financial
23 Pacific on or about April 2, 2012.

24
25 2. Failure to docket the true and correct Nile River Capital Lease for the ATF
26 building signed by the Company on or about March 22, 2012 and Nile River on or
27 about March 23, 2012.

28
29 **G. MRWC's Request To Dismiss Count I of the Formal Complaint**

30
31 MRWC claims that the Company "did not unlawfully encumber any utility asset relating
32 to the purchase of the Well No. 4 property" because the property is not "used and useful."

33
34 Intervenor/Complainant restates the argument presented above in Part II, Section D.

35
36 **H. MRWC's Request to Dismiss Allegation XVII**

37
38 The Company acknowledges that it violated the ALJ's procedural orders.⁶⁸ The Company
39 admits it didn't obtain prior Commission approval before entering long-term debt as is
40 evidenced by its request for retroactive approval of the Capital Leases.

41
42 The Company offers a litany of excuses including claims that Ms. Olsen was confused,
43 overworked, lacking sleep and under pressure from ADEQ to install the arsenic treatment
44 plant or be found in violation of a Consent Order and subject to fines.

45

⁶⁸ MRWC, Closing Brief, Pg. 58, Ln. 13-15.

1 The Company also claims that (i) Ms. Olsen “intended for the Commission Staff to
2 review and approve the leases; (ii) Commission Staff knew about the leases and approved
3 the Company moving forward with construction of the ATF; (iii) Commission Staff does
4 not have any problem with the Company’s filing the wrong leases with the Commission
5 and (iv) Commission Staff would have provided the same recommendations for approval
6 if those leases had been docketed in March 2012.”⁶⁹

7
8 None of these claims and intentions justify the actions undertaken by the Company to
9 docket invalid personal leases with forged signatures to make it appear that the
10 Commission had no authority to approve the leases because they were between Ms. Olsen
11 and Nile River Leasing.

12
13 At the same time, MRWC secretly signed Capital Leases for the ATF building and
14 equipment and withheld the true and correct leases from the Commission for more than a
15 year in violation of three Procedural Orders and ARS 40-301, -302, -303.

16
17 The evidence overwhelming shows this action was done to deceive the Commission in
18 violation of ARS 40-303 (C) in order to avoid prior approval of long-term debt that
19 would have taken many, many months, well past the June 7, 2012 deadline ADEQ had
20 set to have the ATF in the ground.

21
22 MRWC knew from the April 26, 2012⁷⁰ meeting with ADEQ, that if failed to have the
23 plant installed by June 7, 2012, it would be in violation of the Consent Order, which
24 would trigger major fines and force Commission staff to take direct action against the
25 Company because it was not compliance with ADEQ regulations.

26
27 The docketing of the invalid personal leases with forged signatures was an intentional act
28 motivated by the Company’s attempt to avoid ADEQ sanctions that could have led to
29 direct action by ACC staff, including a Staff initiated Order to Show Cause.

30 31 **Part IV Conclusion**

32
33 For the reasons stated above, the Commission should deny retroactive approval of the
34 Nile River and Financial Pacific Capital Leases.

35
36 The Commission should dismiss the entire rate case and financing applications because
37 the Company is not in Compliance with Commission regulations and statutes.

38
39 The Commission should hold the Company and Ms. Olsen in Contempt of the
40 Commission.

41
42 The Commission should refer the Company’s submission of the invalid personal leases
43 with forged signatures to the Attorney General for possible felony prosecution under
44 ARS 40-303 (c).

⁶⁹ MRWC, Closing Brief, Pg. 58, Ln. 22-25, Pg. 59, Ln. 1-3.

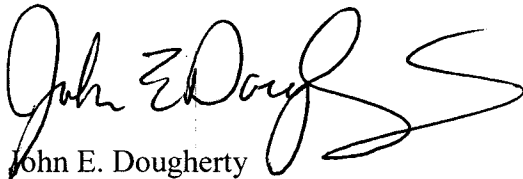
⁷⁰ C-EX 41, ADEQ Notes April 26, 2012; C-EX 41A; ADEQ Notes April 26, 2012.

1 The Commission should declare the Capital Lease agreements obtained in violations of
2 ARS 40-303 (A) null and void.

3
4 The Commission should reopen Decision No. 67583 under the authority of ARS 40-252
5 to declare the sale of the utility assets and transfer of the CC&N to MRWC null and void.

6
7 The Commission should appoint an interim manager to conduct a financial audit of the
8 Company, and based on the audit and the Attorney General's investigation on the ARS
9 40-303(c) violation, possibly sell the Company's assets for fair market value and provide
10 the proceeds to MRWC.

11
12 RESPECTFULLY SUBMITTED THIS 20th Day of SEPTEMBER 2013.

13
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15
16
17 

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